

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

ATHEAL PIERCE,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO.
)	
AMERICAN GENERAL FINANCE,)	06 CV-985-WKW
INC., et al.,)	
)	
Defendants.)	

**REPLY TO PLAINTIFF'S OBJECTION TO
MAGISTRATE'S REPORT AND RECOMMENDATION**

COMES NOW American General Financial Services of Alabama, Inc. ("AGFS"), and for reply to the Plaintiff's objection to the report and recommendation of the magistrate judge states as follows:

**I.
ARGUMENT**

Plaintiff's objection to the magistrate judge's report mirrors his previous submissions in this action in that it does not address the merits of AGFS's motion to dismiss, which the magistrate judge has recommended the Court grant. As the magistrate judge recognized, in order to establish his claim under 42 U.S.C. § 1983, "Plaintiff must show he was deprived of a federal right by a person acting under color of state law." *Patrick v. Floyd Medical Center*, 201 F.3d 1313, 1315 (11th Cir. 2000). In this case, as the magistrate judge correctly concluded, in

commencing foreclosure and ejectment proceedings against Plaintiff, AGFS was performing a "private function arising out of a contract with the Plaintiff," and as a result, "AGFS was not a state actor" as required to state a claim under Section 1983.

In his reply, which is largely nonsensical, Plaintiff in no way rebuts the basis for the magistrate judge's conclusions, and accordingly, the Court should follow the magistrate judge's recommendation and dismiss Plaintiff's action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. **CONCLUSION**

For the foregoing reasons, AGFS requests the Court to follow the magistrate judge's recommendation and enter an order dismissing with prejudice this lawsuit.¹

s/ David A. Elliott

David A. Elliott

Attorney for American General
Financial Services of Alabama, Inc.

¹ In the event the Court for some reason determines that plaintiff's complaint should not be dismissed, AGFS maintains its right to compel plaintiff's claims to arbitration.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by Notice of Electronic Filing, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail, hand delivery, fax or email on this the 2nd day of July, 2007:

Atheal Pierce
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s/ David A. Elliott
OF COUNSEL